

January 30, 1998

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
100 Cambridge Street
12th Floor
Boston, Massachusetts 02202

Re: New England Power Company Comments on Department of Telecommunication and Energy's ("DTE") Information Disclosure Requirements Contained in 220 CMR 11.06

Dear Ms. Cottrell:

New England Power Company ("NEP") hereby files the following comments on the DTE's proposed regulations regarding information disclosure.

► **Market Constraint:**

1. *The regulation discourages the differentiation and development of new retail products to the ultimate detriment of the consumer.* As drafted, the regulation requires that disclosure labels describe the characteristics of the aggregate resource portfolio of the supplier rather than focusing on the product being offered. Suppliers of electricity with diverse portfolios will have little incentive to create and offer products with specific characteristics to consumers if those products are treated like any other sale out of the supplier's mix. Further, LSE's offering multiple products will be required to maintain multiple settlement accounts, a costly and inefficient requirement. The regulation should be modified to make its requirements specific to the product being offered by the LSE to customers. In addition, the regulation should be modified to allow for annual accounting. This accounting methodology would allow LSE's to credibly manage multiple products from one settlement account.

2. *The regulation imposes much greater costs and burdens on certain suppliers and thereby discourages participation in the retail market to the ultimate detriment of the consumer.* As drafted, the regulation requires that a supplier disclose its Known Resource characteristics regardless of whether the supplier makes any claim regarding the product being offered. This requirement imposes a cost burden on suppliers who wish to sell to retail customers without making any particular claim. In contrast, a supplier who has only System Power resources would only have to disclose the average NEPOOL mix. Both suppliers have sold essentially the same product at retail-- undifferentiated system power-- but the supplier with the Known Resource is subjected to greater transaction costs. Additionally, the information transfer and transaction accounting requirements associated

with this regulation could significantly impede the operation of the daily markets, which would otherwise provide substantial benefits to Massachusetts consumers. The regulation should be modified to require disclosure of specific characteristics only when the supplier makes a specific claim regarding the characteristics of the product being sold. If no claim is made, the supplier should only be required to provide a description of the NEPOOL average mix of source characteristics as that information is made available.

3. *The regulation would tend to diminish the likelihood of a robust energy market by preventing a supplier from claiming specific characteristics for system products.* As drafted, the regulation appears to prevent a supplier from ascribing particular characteristics to its system product offerings. This constraint would result in less meaningful and accurate information being offered to consumers, while adversely affecting the system energy market, which would otherwise serve as a means of reducing overall cost to suppliers and, ultimately, to consumers. The regulation should be modified to allow suppliers to ascribe specific characteristics to system energy products so long as they can demonstrate an auditable contract path to verify those characteristics.

4. *The regulation will have the effect of constraining transactions in and reducing the efficiency of the new wholesale electricity markets to the ultimate detriment of the consumer.* As drafted, the regulation requires that system energy transactions administered by ISO-NE introduce characteristics of the residual New England mix into a load serving entity's ("LSE") hourly record of fuel and emission characteristics. This requirement discourages or prevents LSE's whose marketing strategy is to exclude specific resource types from its product(s) from engaging in economic system energy purchases through the ISO-NE markets. Such system energy transactions are crucial to hedging supply costs and the overall economic efficiency of the New England wholesale electricity markets. The regulation should be modified to either allow a net threshold of market interchange in a LSE's mix of perhaps 15% without impact on its fuel and emissions characteristics, or to provide for annual accounting of energy supply versus demand, and avoid strict hourly based accounting.

► **Import Loophole:**

The proposed regulations contain a loophole that could easily undermine the purpose of the regulation, which is to provide consistent, accurate and meaningful information to consumers. As drafted, the regulation's treatment of imports would allow LSE's in New England to claim fuel and emission characteristics for generation that may not physically contribute to serving New England retail load. Since the only requirement of imports is that they appear in the ISO-NE settlement and that the LSE buyer have contract language that such scheduled energy is purported to come from a particular generating resource located in a neighboring control area, LSE's may claim source characteristics for electrons that may never enter the New England electric grid. Currently, there is no way to verify that these characteristics are not being claimed in both control areas.

In addition, since the proposed rule would credit scheduled megawatthours (“MWH”) and not the level of actual MWH that flow into the New England electric grid, LSE's could claim source characteristics for energy imports well beyond the physical capability of the transmission lines. This mechanism provides opportunity to "green-wash" electricity. Consider a LSE with 100 megawatts (“MW”) of retail load in the hour and 100MW of New England generation with less marketable characteristics in the hour. This utility could sell 100% of its hourly generation through unit contracts to a company in New York or Canada. The same company outside the NEPOOL control area could then sell 100MW of more marketable claims back to the LSE in New England. Nothing in the physical operation of the system changed. There was no net flow over the transmission lines to New England since the two 100MW transactions offset each other. The 100MW of less marketable New England generation physically supplied energy into the New England electric grid, yet the more marketable generation in New York or Canada was claimed for disclosure purposes. This same example could be expanded to offsetting transactions in quantities that far exceed the import capability of all the ties into New England from neighboring pools. Theoretically, all less marketable NE generation could be "washed" through a paper export transaction. This green-washing would seem to render the advertised information meaningless to consumers. Their purchase decisions would have no impact on generation operation or construction decisions in New England.

NEP suggests that unless and until a meaningful verification process can be instituted to deal with imports, that imports be assigned the NEPOOL average mix for their resource characteristics.

► **Administrative Burden:**

The regulation imposes information gathering requirements on suppliers with Known Resources with which they might be unable to comply. As drafted, the regulation requires suppliers to provide information regarding resources for which they may have only a contractual entitlement with no ownership interest and no right to the information required by the regulation, while imposing penalties for failure to comply. On its face, this requirement seems unreasonable and unworkable. Until a comprehensive, regional disclosure system is in place, disclosure of Known Resource characteristics should be required only when a specific claim is made. LSE's would then have the opportunity of ensuring the requisite information is available before making a claim.

In summary, NEP believes the following changes should be made to the regulation:

1. Target disclosure requirements to the product being offered not the supplier.
2. Use an annual accounting methodology.

3. Require specific disclosure only when a specific claim is being made; otherwise use the NEPOOL average mix of source characteristics for labelling purposes.
4. Allow specific characteristics to be attributed to system products.
5. Allow a net threshold of market interchange in a LSE's mix before requiring the source characteristics of the interchange to be included in the LSE's mix, or go to annual accounting rather than hourly.
6. Close the import loophole by ascribing the NEPOOL average mix of source characteristics to imports.
7. Until a comprehensive, regional disclosure system is in place, require disclosure of Known Resource characteristics only when a specific claim is made.
8. Require LSE reporting to customers on an annual basis rather than some shorter period of time.

The comments provided above reflect NEP's discussions internally and with others, including the ISO-NE, the Conservation Law Foundation, other New England regulators and officials and other market participants. NEP is interested in helping to devise and implement a meaningful disclosure system for the region that does not distort the market for electricity or impose unnecessary costs or burdens on market participants. Such a system is most likely to serve the best interests of consumers. NEP welcomes a dialogue with the DTE and other interested parties to achieve this objective.

New England Power Company,
By its attorney,

Eric K. Runge

c: George B. Dean, Attorney General's Office